

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Nanci E. Langley; and
Robert G. Taub

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators 1
HongKong–United States Postal Service
Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2012-4

NOTICE AND ORDER CONCERNING RATE ADJUSTMENT
FOR BILATERAL AGREEMENT WITH HONGKONG POST
NEGOTIATED SERVICE AGREEMENT

(Issued November 18, 2011)

I. INTRODUCTION

On November 14, 2011, the Postal Service filed a notice, pursuant to 39 CFR 3010.40 *et seq.*, and Order No. 549, that it has entered into a bilateral agreement with HongKong Post Group (HongKong Post 2012 Agreement or Agreement), which it seeks to include in the Inbound Market Dominant Multi-Service

Agreements with Foreign Postal Operators 1 product.¹ The Notice concerns the portion of a bilateral agreement with the HongKong Post Group for inbound competitive services that the Postal Service contends is similar and functionally equivalent to agreements already included in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 2.

In support of its Notice, the Postal Service filed two attachments as follows:

- Attachment 1—an application for non-public treatment of materials to maintain redacted portions of the agreement and supporting documents under seal; and
- Attachment 2—a redacted copy of the HongKong Post 2012 Agreement.

The Postal Service also provided a redacted version of the supporting financial documentation as a separate Excel file.

In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product and the Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Post PakketSERVICE Benelux BV (TNT Agreement) and the China Post Group–United States Postal Service Letter Post Bilateral Agreement (CPG Agreement). In Order No. 700, the Commission approved the functionally equivalent HongKong Post Agreement (HongKong Post Agreement).² In Order 871, the Commission approved the functionally equivalent China Post 2011 Agreement.³

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 14, 2011 (Notice); see also Docket Nos. MC2010-35, R2010-5 and R2010-6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order 549).

² See Docket No. R2011-4, Order Approving Rate Adjustment for HongKong Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, March 18, 2011 (Order No. 700).

³ See Docket No. R2011-7, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 23, 2011 (Order 871).

HongKong Post 2012 Agreement. The Postal Service and HongKong Post, the postal operator for Hong Kong are parties to the HongKong Post 2012 Agreement. The Agreement covers, *inter alia*, the delivery of inbound Letter Post, in the form of letters, flats, small packets, bags, and International Registered Mail service for Letter Post. It also includes an ancillary service for delivery confirmation scanning with Letter Post small packets. Notice at 4; Attachment 2 at 10. The Postal Service states that the proposed inbound market dominant rates are intended to become effective on January 1, 2012, and to remain in effect for 1 year. *Id.* at 3; Attachment 2 at 6. The HongKong Post 2012 Agreement provides that it becomes effective after all regulatory approvals have been received, notification to HongKong Post, and mutual agreement on an effective date. *Id.*, Attachment 2 at 1. The Agreement however, may be terminated by either party on no less than 30 days' written notice. *Id.*, Attachment 2 at 2.

Requirements under part 3010. The Postal Service states that the projected financial performance of the HongKong Post 2012 Agreement is provided in the Excel file included with its filing. It contends that improvements should enhance mail efficiency and other functions for Letter Post items under the Agreement. *Id.* at 4-5.

The Postal Service asserts that the Agreement should not cause unreasonable harm in the marketplace since it is unaware of any significant competition in this market. *Id.* at 5-6.

Under 39 CFR 3010.43, the Postal Service is required to submit a data collection plan. The Postal Service indicates that it intends to report information on this Agreement through its Annual Compliance Report. While indicating its willingness to provide information on mailflows within the annual compliance review process, the Postal Service proposes that no special data collection plan be established for this Agreement. With respect to performance measurement, it requests that the Commission exempt the HongKong Post 2012 Agreement from separate reporting requirements under 39 CFR 3055.3(a)(3) as determined in Order Nos. 549, 700, and 871 for the Agreements in Docket Nos. R2010-5 and R2010-6, R2011-4, and R2011-7, respectively. *Id.* at 7.

The Postal Service advances reasons why the instant Agreement is functionally equivalent to the previously filed CPG Agreement, TNT Agreement, HongKong Post Agreement and China Post 2011 Agreement. It contends that it contains the same attributes and methodology and fits within the Mail Classification Schedule language for the Inbound Multi-Service Agreements with the Foreign Postal Operators 1 product. *Id.* at 8-10. Additionally, it states that the HongKong Post 2012 Agreement includes similar terms and conditions, *e.g.*, is with a foreign postal operator, conforms to a common description, and relates to rates for Letter Post tendered from the postal operator's territory. *Id.* at 9.

The Postal Service identifies specific terms that distinguish the instant Agreement from the three existing agreements. These distinctions include clarifying legal requirements, revised rates, term, signatory, and other changes. *Id.* at 10-11. The Postal Service contends that the instant Agreement is nonetheless functionally equivalent to existing agreements. *Id.* at 11.

In its Notice, the Postal Service maintains that certain portions of the Agreement, prices, and related financial information should remain under seal. *Id.* at 11-12; *id.* Attachment 1.

The Postal Service concludes that the HongKong Post 2012 Agreement should be added as a functionally equivalent agreement under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 12.

II. NOTICE OF FILINGS

Interested persons may submit comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3622 and 39 CFR part 3010.40. Comments are due no later than November 30, 2011. The public portions of these filings can be accessed via the Commission's website (<http://www.prc.gov>).

The Commission appoints James F. Callow to serve as Public Representative in this docket.

III. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Docket No. R2012-4 to consider matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments by interested persons in this proceeding are due no later than November 30, 2011.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Ruth Ann Abrams
Acting Secretary